IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6389 of 2002

WITH
SPECIAL CIVIL APPLICATION No 5240 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHAVANBHAI HIRABHAI WAGHELA

Versus

ARAT ELECTRO CHEMICALS LTD

Appearance:
1. Special Civil Application No. 6389 of 2002
MR GIRISH M DAS for Petitioner No. 1-9
..... for Respondent No. 1

CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 11/07/2002

COMMON ORAL JUDGEMENT

1. Both these petitions have been filed challenging the award made by the Labour Court in Reference (L.C.A.)

No.364/1995 and in Reference (L.C.A.) No.338/1995 dated 15th January, 2001. Both these petitions are, therefore, heard together and they have been disposed of by this common order.

2. The first petition i.e. Special Civil Application No.6389/2002 has been filed by the workmen of the respondent - concern, challenging the award where it refuses the reinstatement and payment of 100% backwages. It may be noted that in the award the petitioners of this petition have been given benefit of 25% backwages from the date of the order of termination of their service and the benefits which they were entitled to receive on account of closure of the respondent.

2.1. The second petition i.e. Special Civil Application No.5240/2001 has been filed by the Industrial concern namely Arat Electro Chemicals Ltd. challenging the said award wherein the Labour Court has granted 25% backwages and the benefits permissible to the workmen on account of closure of the said concern.

2.2. According to the petitioner - workmen they were working in the respondent for the last 10 years before their service came to be terminated. Since they became the member of the Gujarat Kamdar Karmachari Union, the management of the respondent entertained grudge against them and because of that they were harassed of and all. Further their say is that because they raised certain demands, the respondent threatened them with dire consequence and to dismiss them from the service. It is further averred that the management of the respondent instigate the members of the rival Union and got the present petitioners belaboured and they were relieved from the service without following any due procedure by the respondent with effect from 25th September, 1999. It is also averred that because of the atmosphere of panic created by the members of the rival union at the instance of the management, they were not able to go to the premises of the respondent and collect their legitimate dues. Petitioners raised dispute, which ultimately came to be referred to the Labour Court by way of reference and in the said reference the petitioners prayed for reinstatement in service with continuity and to pay to them the backwages together with Rs. One lakh towards compensation.

2.3. As against that the case of the respondent is that the allegations made by the petitioners against the respondent in the statement of claim were not true. According to the respondent the petitioner - workmen had

on their own stopped reporting for duty and despite the management offering them to report for duty they did not do so. The respondent, therefore, cannot be saddled with the liability of reinstating them and to pay backwages. Ultimately it contended that reference had no merit and it should be dismissed.

2.4. At the proceedings before the Labour Court both the sides have produced evidence in support of their contentions. The Labour Court after appreciating the entire evidence adduced before it came to the conclusion that the respondent had been illegally closed down. It also came to the conclusion that the service of the petitioners were terminated without following the requisite prior procedure. It was also found that so far the petitioners were concerned they did not avail the opportunities offered to them to report for work and they were also partly found liable for accelerating the closure of the respondent. The Labour Court upon these findings, passed the award in terms already stated above. Mr.Das appearing for the petitioners in Special Civil Application No.6389/2002 has submitted that the order passed by the Labour Court is erroneous in asmuch as the findings arrived at by the Labour Court are totally perverse and dehors the evidence which has been brought on record from the side of the petitioners. He has further urged that since the findings given by the Labour Court are perverse, this Court sitting under Article 227 of the Constitution of India can certainly interfere with the same and pass appropriate order. He has further submitted that since the Labour Court has come to the conclusion that the respondent - concern was illegally closed, the petitioners were entitled to have the reinstatement with full backwages and all other incidental benefits. In support of his contention Mr.Das has placed reliance on the decision of the Apex Court in the case of J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. reported in 2001 A.I.R. S.C.W. 140.

2.5. As against that Mr.Buch learned counsel for the respondent - concern has submitted that the award granting 25% backwages to the petitioners is erroneous. He has submitted that since the closure of the respondent was not a term of the reference, the Labour Court ought not to have gone into the said question and given its finding thereon. He has further submitted that since the respondent concern was ready and willing to permit the petitioners to discharge their duties the Labour Court was in error in awarding 25% backwages.

2.6. It may be stated that Mr.Das while advancing his

submissions has produced a copy of the deposition of one of the petitioners and he has placed extensive reliance on the same. So far Special Civil Application No.5240/2001 is concerned submissions of the counsel are the same and, therefore, they are not repeated here.

3. I have carefully gone through the entire record of both the petitions. From the record and in particular the award of the Labour Court, it clearly appears that the petitioners were poor employees of the respondent and they were dismissed from the service on the ground that they had remained absent from work and despite the respondent having offered them to join duty they had not done so. However, from the record it appears that at no point of time the respondent had tried to establish that the service of the petitioners was terminated after following the due procedure and, therefore, the action of terminating their service was proper. That is the main ground which has weighed with the Labour Court for partially granting the reference in favour of the petitioners. Incidentally the Labour Court has also referred to the question with regard to the validity of the closure of the respondent and has observed that the same was illegal. However, the Labour Court has taken into consideration the closure of the respondent mainly for the purpose of not granting relief of reinstatement to the petitioners. The Labour Court also from the evidence of record has found that the petitioners had not made sincere efforts to resume work and from the record this finding appears to be correct. Since I am in broad agreement with the findings given by the Labour Court there is no reason for me to reappreciate the evidence which has been adduced before it. The contention of Mr.Das that the findings of the Labour Court are perverse and for that reason this Court should interfere with the same cannot be accepted. Since I find that the findings are totally in consonance with the evidence that has been brought on record the same cannot be termed as perverse. If the findings are not perverse there is no reason for me sitting under Article 227 of the Constitution of India to reappreciate the evidence and to interfere with the same.

4. So far the contention of Mr.Buch with regard to the power of the Labour Court to examine the validity of the closure of the mill of the respondent is concerned though this issue directly was not referred to the Labour Court in reference it was empowered to do so for the reasons connected with this reference. Mr.Buch submits that since the point for determination of this issue in the Labour Court are always framed at the fag end of the

trial, the respondent could not have known in advance whether such issue will be considered by the Labour Court and, therefore, there was no question for the respondent to raise objection to the effect that the Labour Court had no power to entertain with the dispute and give its decision thereon. This submission has also no merit because as already stated above, this issue came to be considered by the Labour Court only with regard to the reinstatement and grant of backwages etc., and for that purpose it was very necessary for the Labour Court to arrive at a particular conclusion with regard to the closure of the respondent so as to enable it to give proper relief to the petitioners. The respondent therefore, cannot agitate that they had not been given opportunity or advance notice with regard to this controversy. According to Mr.Das the Labour Court was will within its jurisdiction to do so and even when the reference did not contain such term, the Labour Court was entitled to consider this issue and give its findings thereon. For that purpose he drew my attention to the aforesaid decision of the Apex Court and also pointed out from the said decision wherein the Supreme Court has in slightly different context observed as under :-

" The question for consideration before us is whether the Division Bench was right in concluding that the question or closure was never referred to the Industrial Tribunal and/or in concluding that there was no closure of any unit of the Appellant Company.

As has been set out hereinabove, amongst other disputes which have had been referred to the Industrial Tribunal was Dispute No.2, which reads as follows :-

"Whether the retrenchment in 4 Divisions of J.K.Synthetics [viz. J.K.Synthetics, J.K. Acrylics, J.K. Tyre Cord and J.K. Staple and Tows, Kota) was justified and if not, to what relief the workers were entitled ?"

Thus the Industrial Tribunal was required to go into the question whether or not the retrenchment was justified. The appellant had sought to justify retrenchment of the 1164 workers on the basis that there was a closure of a section of the Nylon Plant. Thus in order to come to the conclusion, whether or not retrenchment was justified, the Industrial Tribunal necessarily

had to first decide whether or not there was a closure.

This Court in the case of Express Newspapers Ltd. v. Their Workers and Staff, report in (1962) 2 Lab LJ 227 (AIR 1963 SC 569) has held that if the Industrial Tribunal had to decide whether strike was justified, it would have to examine the question whether or not the dispute referred to it was an Industrial Dispute. This Court held that the decision of this question would inevitably depend upon the view which the Industrial Tribunal may take as to whether the action taken by he Company is a closure or a lock out. It was observed as follows :-

> It is also true that even if the dispute is tried by the Industrial Tribunal, at the very commencement, the Industrial Tribunal will have to examine as a preliminary issue the question as to whether the dispute referred to it is an Industrial dispute or not, and the decision of this question would inevitably depend upon the view which the Industrial Tribunal may take as whether the action taken by the appellant is a closure or a lock out. The finding which the Industrial Tribunal may record on this preliminary issue will decide whether it has jurisdiction to deal with the merit of the dispute or not."

This Court in the case of Pipraich Sugar Mills Ltd. v. Pipraich Sugar Mills Mazdoor Union reported in 1956 SCR 872 (AIR 1957 SC 95) has held that the definition of an industrial dispute as contained in the Industrial Disputes Act contemplated the existence of an industry and a subsisting relationship of employer and employees between the parties. This Court has held that here could be no industrial dispute within the meaning of this Act where the industry has been closed and the closure is real and bona fide.

Thus, in our view, the Division Bench erred in coming to the conclusion that the Tribunal could not have gone into the question of closure as it was not referred to it. In our view, on the disputes which have been referred, particularly Dispute No.2 (set out hereinabove) it became

absolutely necessary for the Tribunal to first ascertain whether there was a closure and whether such closure was bona fide."

The said submission advanced by Mr.Buch therefore, requires to be rejected. In my opinion, both these petitions do not have any merit and, therefore, Special Civil Application No.6389 of 2002 is required to be dismissed at the preliminary stage of hearing. In Special Civil Application No.5240 of 2001, Rule is discharged with no order as to costs. Interim relief stands vacated.

11.7.2002. [AKSHAY H. MEHTA, J.]

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